



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 01435-00

17 August 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 18 Feb 00 w/attachments
(2) PERS-311 memo dtd 19 May 00
(3) Memo for the Record dtd 24 Jul 00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 15 May 1998 to 31 January 1999 and 6 to 7 July 1999, copies of which are at Tabs A and B, respectively. Petitioner further requested removal of his failures of selection for promotion before the Fiscal Year (FY) 00 and 01 Line Lieutenant Commander Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. Beckett, McPartlin and Whitener, reviewed Petitioner's allegations of error and injustice on 10 August 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner received the two contested fitness reports from his tour with the USS KAUFFMAN (FFG-59). He contends the reports contain adverse information not reflective of his past and present performance as a naval officer. He maintains that the events surrounding these reports and his early transfer from the ship were triggered by the tragic loss of two of his family members, his sister and father, who died on 3 May 1997 and

16 June 1998, respectively. He notes that the Chief of Naval Personnel disapproved the reporting senior's request of 13 October 1998 for his detachment for cause (DFC). He further contends that the contested fitness report for 15 May 1998 to 31 January 1999 resulted in his failure of selection by the FY 00 Line Lieutenant Commander Selection Board.

c. The report for 15 May 1998 to 31 January 1999 is adverse in both marks and comments. Petitioner contends that this report is biased and does not reflect his accomplishments throughout the entire period of evaluation, although he provided the reporting senior input reflecting those accomplishments. He also contends that performance input reports from two TAD (temporary additional duty) commands were received by the reporting senior, but disregarded.

d. The contested fitness report for 6 to 7 July 1999 is a "Not Observed" report with no marks assigned. However, the narrative in block 41 states the following:

This fitness report is for continuity purposes only. "Non-observed", required due to SNO [subject named officer]'s lengthy [sic] TAD assignment away from KAUFFMAN during administrative proceedings following his 06 OCT 98 declaration to the Commanding Officer, quote I quit unquote.

Petitioner's record also includes his rebuttal to this report and the reporting senior's endorsement on the rebuttal. Both directly address the reporting senior's comment to the effect that Petitioner said he quit. Petitioner contends this report violates Bureau of Naval Personnel Instruction 1610.10, Annex G, which states that adverse comments are not to be listed in block 41 of "Not Observed" fitness reports.

e. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over fitness report matters has recommended that the report for 15 May 1998 to 31 January 1999 remain unchanged, and that block 41 of the report for 6 to 7 July 1999 be changed by deleting the following: "during administrative proceedings following his 06 OCT 98 declaration to the commanding officer, quote I quit unquote." Concerning the report for 15 May 1998 to 31 January 1999, the advisory opinion states that nothing provided in the petition shows the reporting senior acted for illegal or improper purposes, or that the report lacked rational support. They note the reporting senior determines what material will be included in a fitness report; that his comments explain his reason for writing the report as he did; that a fitness report does not have to be consistent with previous or subsequent reports; and that enhancement of chances for promotion is not sufficient reason to remove a fitness report. They conclude that Petitioner does not prove the report to be unjust or in error. They give no reason for their recommendation to amend the report for 6 to 7 July 1999.

f. The memorandum for the record at enclosure (3) documents a phone conversation in which Petitioner indicated that he had nothing further to offer in reply to the advisory opinion, and that he wanted his case to go before the Board as is.

g. The FY 00 Line Lieutenant Commander Selection Board convened on 20 April 1999 and adjourned on 5 May 1999.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice warranting partial relief, specifically, modification of the fitness report for 6 to 7 July 1999 as recommended by the advisory opinion at enclosure (2).

In finding that the report for 6 to 7 July 1999 should be amended, the Board concludes that the language reflecting Petitioner said he quit is harmful to him, and inappropriate in a "Not Observed" report. They further find that Petitioner's rebuttal and endorsement must be removed as well, as they relate to the language to be removed. They find no basis to remove this report completely, as Petitioner requested.

In finding that the report for 15 May 1998 to 31 January 1999 should stand, the Board substantially concurs with the advisory opinion at enclosure (2). They conclude that Petitioner's bereavement and the disapproval of the request for his DFC did not preclude the reporting senior's documenting perceived deficiencies in Petitioner's performance.

The Board finds Petitioner's failures of selection before the FY 00 and 01 Line Lieutenant Commander Selection Boards should stand. They note the fitness report for 6 to 7 July 1999 was not in the record for the FY 00 selection board, which adjourned on 5 May 1999. They find the adverse report for 15 May 1998 to 31 January 1999 would have made Petitioner's FY 01 selection definitely unlikely, even if the report for 6 to 7 July 1999 had been amended in accordance with this Board's direction.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by making the following changes to his fitness report for 6 to 7 July 1999, dated 14 July 1999 and signed by [REDACTED]

(1) Remove the following from the second sentence in block 41 ("Comments on Performance"):

during administrative proceedings following his 06 OCT 98 declaration to the Commanding Officer, quote I quit unquote

The sentence, as corrected, should read as follows:

"Non-observed", required due to SNO's lengthy TAD assignment away from KAUFFMAN.

(2) Remove Petitioner's rebuttal dated 20 July 1999 and first endorsement dated 23 July 1999.

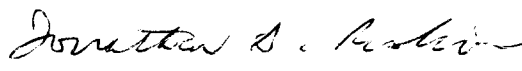
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

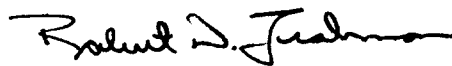
d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


For W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1435-00

1610
PERS-311
19 May 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: LT [REDACTED], US [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the period 15 May 1998 to 31 January 1999, and 6 July 1999 to 7 July 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the reports in question to be on file. They are signed by the member acknowledging the contents of each and his right to submit a statement. The member indicated he did desire to submit a statement for the fitness report for the period 15 May 1998 to 31 January 1999. The member's statement and reporting senior's endorsement are properly reflected in the member's record. The member did not desire to submit a statement for the fitness report for the period 6 July 1999 to 7 July 1999.

b. The member alleges the fitness reports are adverse and is not reflective of his past and present performance. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he must provide evidence to support the claim. I do not believe [REDACTED] has done so. The fitness report itself represents the opinions of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the report lacked rational support.

c. The reporting senior is charged with commenting on the performance or characteristics of an officer under his/her command and determines what material will be included in a fitness report. The reporting senior clearly explains in the narrative portion of the fitness report and his endorsement to the member's statement, his reason for writing the report as he did.

d. Reference (a), Annex S, paragraph S-3 states: "A member has the right to submit fitness report inputs, and has the duty to do so if requested by the reporting senior." The member indicated he submitted his fitness report inputs, however, in whatever manner the fitness report is developed represents the judgment and appraisal authority of the reporting senior.

e. A fitness report does not have to be consistent with previous or subsequent reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period.

f. Enhancement of chances for promotion is not sufficient reason to remove a fitness report.

g. The member does not prove the report to be unjust or in error.

3. We recommend the fitness report for the period 15 May 1998 to 31 January 1999 remain unchanged and recommend change block-41 on the fitness report for the period 6 July 1999 to 7 July 1999 by deleting the following:

"during administrative proceedings following his 06 OCT 98 declaration to the commanding officer, quote, I quit unquote".

[REDACTED]
Head, Personnel
Evaluation Branch

HD:hd
Docket No. 01435-00
24 July 2000

MEMORANDUM FOR THE RECORD ,

Subj: [REDACTED] USN, [REDACTED]

1. This memorandum for the record is to document the phone conversation between SNO and this staff member.

2. SNO indicated that he had received our letter dated 9 June 2000 which forwarded the advisory opinion and giving him 30 days to response or request for an extension of time. During this phone conversation SNO indicated that he had nothing to offer and that I should take the case to the Board as is.

[REDACTED]